

BEFORE THE TENNESSEE REGULATORY AUTHORITY

RECEIVED

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IN RE: :
:
APPLICATION OF JACKSON ENERGY :
AUTHORITY FOR A CERTIFICATE OF :
CONVENIENCE AND NECESSITY TO :
PROVIDE TELECOMMUNICATIONS :
SERVICES AS A CARRIERS' CARRIER :

T.R.A. DOCKET ROOM

Docket No. 03-00438

**MOTION TO QUASH OR, IN THE ALTERNATIVE,
FOR PROTECTIVE ORDER AND REQUEST FOR EMERGENCY
CONSIDERATION**

Jackson Energy Authority ("JEA") hereby moves to quash the subpoenas for John W. Williams, Dana R. Wheeler, Kim Kersey, Thomas E. Nanney and Darrell T. Pope, copies of which are attached (the "Subpoenas"). Counsel for Charter Communications mailed the Subpoenas to counsel for JEA via Federal Express, and the Subpoenas were received in counsel's office on November 4, 2003. Counsel for JEA expressly reserved the right to file this motion to quash and/or for protective order. Because of the overbroad and unduly burdensome nature of the Subpoenas, as well as the proximity of the hearing, JEA respectfully requests emergency consideration of this Motion.

In support of this Motion, JEA would further state:

1. JEA filed an Application for a Certificate of Convenience and Necessity with the Authority on July 15, 2003.
2. The afternoon of October 10, 2003 – some 88 days after the Application was filed – Charter filed its Petition to Intervene in this docket. The Petition to Intervene, among other things, requested the opportunity for discovery.

3. On October 15, 2003, JEA filed its objection to the Petition to Intervene, asserting, among other things, that, as a matter of law, the Petition should be denied as being outside the 60 day statutory certification process and further asserting that the Petition cannot be granted without impairing the prompt and orderly conduct of the proceeding.

4. On October 16, 2003, the Hearing Officer held a conference call with counsel for JEA and counsel for Charter. During the conference call, the Hearing Officer granted Charter's intervention, but denied Charter's request to conduct discovery. On November 3, 2003, the Hearing Officer entered an Order to this effect, stating on page 4 "discovery of JEA's position would not be necessary."

5. At some time, counsel for Charter presented the Subpoenas to the Hearing Officer for issuance, and on November 3, 2003, counsel for Charter forwarded the Subpoenas to counsel for JEA.

6. The Subpoenas include the following extremely broad listing of "items to bring":

Any and all documents or other written information regarding or in any way relating to Jackson Energy Authority's application for a Certificate of Convenience and Necessity in this matter, including, but not limited to: contracts or agreements with customers, including drafts or proposed models for same; business plans or proposals; financial statements or projections, including balance sheets, income statements and statements of cash flows; engineering reports or proposals; advertising materials, whether currently being used or being considered for future use; contracts or agreements with consultants, including drafts or proposed models for same; and public relations materials, whether currently being used or being considered for future use; as well as documents relating to Jackson Energy Authority's willingness and/or ability to comply with all applicable rules and regulations in Tennessee pertaining to the provision of telecommunications services within Madison County, Tennessee.

7. On November 4, 2003, JEA filed the pre-filed rebuttal testimonies of John Williams, Dana R. Wheeler and Kim Kersey, each of whom will be available at the hearing already.

8. The hearing in this matter is scheduled for November 10, 2003, and JEA is in the process of preparing for the hearing.

9. Counsel for JEA has conferred with counsel for Charter concerning this matter, and discussions are on-going. However, given the proximity of the hearing as well as the extremely broad nature of the requests, JEA has filed this Motion and seeks resolution of the issue at the Hearing Officer's first opportunity.

GROUND FOR THE MOTION

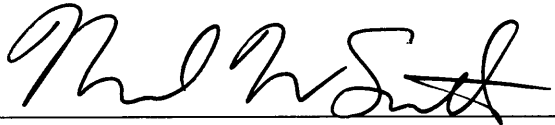
10. The Subpoenas are in violation of the rules of the Authority. The rules provide at Rule 1220-1-2-.13 that subpoenas and subpoenas duces tecum shall be issued at the request of any party, but this section concludes with a very clear statement relevant to this motion: "This section may not be used to circumvent the provisions of Rule 1220-1-2-.11."

11. Rule 1220-1-2-.11 governs discovery in contested cases, and that rule provides that discovery is permissive. In his November 3, 2003 order, the Hearing Officer denied Charter's request for discovery. The Subpoenas are a clear attempt to circumvent the provisions of Rule 1220-1-2-.11 as well as the Hearing Officer's order, and the Hearing Officer should quash the Subpoenas in full.

12. The Subpoenas are also overly broad, unduly burdensome, oppressive and seek information that is unreasonably cumulative or duplicative.

WHEREFORE, JEA ask that the Subpoenas be quashed as an unauthorized attempt to "circumvent" the Hearing Officer's discovery order or in the alternative, that a protective order be entered pursuant and that JEA be granted such other and further relief to which it may be entitled.

Respectfully submitted this 6th day of November, 2003.



Carlos C. Smith (TN BPR No. 1710)
Mark W. Smith (TN BPR No. 16908)
Counsel for Jackson Energy Authority
Strang, Fletcher, Carriger, Walker, Hodge & Smith, PLLC
400 Krystal Building
One Union Square
Chattanooga, Tennessee 37402
Telephone: (423) 265-2000
Facsimile: (423) 756-5861

CERTIFICATE OF SERVICE

I certify that on this 6th day of November, 2003, a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail postage prepaid to counsel of record listed below.

Henry Walker, Esq.
Boult Cummings Conners & Berry, PLC
414 Union Street, Suite 1500
Nashville, Tennessee 37219

Charles B. Welch, Jr., Esq,
Farris, Mathews, Branan, Bobango & Helen, PLC
618 Church Street, Suite 300
Nashville, Tennessee 37219



For: Strang, Fletcher, Carriger, Walker
Hodge & Smith, PLLC

STATE OF TENNESSEE
TENNESSEE REGULATORY
AUTHORITY

SUBPOENA

(ORDER TO APPEAR)

☒ DUCES TECUM

CIVIL ACTION

DOCKET NO. 03-00438

IN RE: APPLICATION OF JACKSON ENERGY AUTHORITY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY

TO: (NAME, ADDRESS, & TELEPHONE NUMBER OF WITNESS)

Mr. Thomas E. Nanney
Senior VP of Electric Division
Jackson Energy Authority
119 East College Street
Jackson, TN 38301
(731) 422-7500

Method of Service:

☐ Davidson County Sheriff☒ Personal Service☐ Out of County Sheriff

You are hereby commanded to appear at the time, date and place specified for the purpose of giving testimony. In addition, if indicated, you are to bring the items listed. Failure to appear may result in punishment by fine and/or imprisonment as provided by law.

TIME

11:00 a.m.

DATE

Nov. 10, 2003

PLACE

Tennessee Regulatory Authority
Hearing Room, Ground Floor
460 James Robertson Parkway
Nashville, Tennessee 37243

ITEMS TO BRING:

Any and all documents or other written information regarding or in any way relating to Jackson Energy Authority's application for a Certificate of Convenience and Necessity in this matter, including, but not limited to: contracts or agreements with customers, including drafts or proposed models for same; business plans or proposals; financial statements or projections, including balance sheets, income statements, and statements of cash flows; engineering reports or proposals; construction plans, bids, or proposals; advertising materials, whether currently being used or being considered for future use; contracts or agreements with consultants, including drafts or proposed models for same; and public relations materials, whether currently being used or being considered for future use; as well as documents relating to Jackson Energy Authority's willingness and/or ability to comply with all applicable rules and regulations in Tennessee pertaining to the provision of telecommunications services within Madison County, Tennessee.

☐ Additional List Attached

This subpoena is being issued on behalf of

☐ PETITIONER ☒ INTERVENOR

Attorney. (NAME, ADDRESS, & TELEPHONE NUMBER)

Charles B. Welch, Jr.
618 Church Street, Suite 300
Nashville, TN 37219 615-726-1200

ATTORNEY'S SIGNATURE:

DESIGNEE:

DESIGNEE'S SIGNATURE:

DATE ISSUED

BY

J. Richard Collier
HEARING OFFICER

RETURN ON SERVICE

Check one: (1 or 2 are for the return of an authorized officer or attorney; an attorney's return must be sworn to; 3 is for the witness who will acknowledge service and requires the witness's signature.)

1. ☐ I certify that on the date indicated below I served a copy of this subpoena on the witness stated above by

2. ☐ I failed to serve a copy of this subpoena on the witness because

3. ☐ I acknowledge being served with this subpoena on the following date:

Sworn to and subscribed before me this

_____ day of _____, 20____

Signature of ☐ Notary Public or ☐ Deputy Clerk

My Commission Expires: _____

DATE OF SERVICE

SIGNATURE OF WITNESS, OFFICER, ATTORNEY
OR ATTORNEY'S DESIGNEE

STATE OF TENNESSEE TENNESSEE REGULATORY AUTHORITY	SUBPOENA (ORDER TO APPEAR) <input checked="" type="checkbox"/> DUCES TECUM	CIVIL ACTION DOCKET NO. 03-00438
IN RE: APPLICATION OF JACKSON ENERGY AUTHORITY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY		
TO: (NAME, ADDRESS, & TELEPHONE NUMBER OF WITNESS) Mr. Kim Kersey Senior VP of Telecommunications Jackson Energy Authority 119 East College Street Jackson, TN 38301 (731) 422-7257	Method of Service: <input type="checkbox"/> Davidson County Sheriff <input checked="" type="checkbox"/> Personal Service <input type="checkbox"/> Out of County Sheriff	
You are hereby commanded to appear at the time, date and place specified for the purpose of giving testimony. In addition, if indicated, you are to bring the items listed. Failure to appear may result in punishment by fine and/or imprisonment as provided by law.		
TIME 11:00 a.m.	DATE Nov. 10, 2003	ITEMS TO BRING: Any and all documents or other written information regarding or in any way relating to Jackson Energy Authority's application for a Certificate of Convenience and Necessity in this matter, including, but not limited to: contracts or agreements with customers, including drafts or proposed models for same; business plans or proposals; financial statements or projections, including balance sheets, income statements, and statements of cash flows; engineering reports or proposals; construction plans, bids, or proposals; advertising materials, whether currently being used or being considered for future use; contracts or agreements with consultants, including drafts or proposed models for same; and public relations materials, whether currently being used or being considered for future use; as well as documents relating to Jackson Energy Authority's willingness and/or ability to comply with all applicable rules and regulations in Tennessee pertaining to the provision of telecommunications services within Madison County, Tennessee <input type="checkbox"/> Additional List Attached
PLACE Tennessee Regulatory Authority Hearing Room, Ground Floor 460 James Robertson Parkway Nashville, Tennessee 37243		DATE ISSUED <div style="text-align: right;"> BY <u>J. Richard Collier</u> HEARING OFFICER </div>
This subpoena is being issued on behalf of <input type="checkbox"/> PETITIONER <input checked="" type="checkbox"/> INTERVENOR Attorney: (NAME, ADDRESS, & TELEPHONE NUMBER) Charles B. Welch, Jr. 618 Church Street, Suite 300 Nashville, TN 37219 615-726-1200 ATTORNEY'S SIGNATURE: DESIGNEE: <u>Charles B. Welch Jr.</u> DESIGNEE'S SIGNATURE:		
RETURN ON SERVICE		
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3.	<input type="checkbox"/> I acknowledge being served with this subpoena on the following date: _____	
Sworn to and subscribed before me this _____ day of _____, 20____ Signature of <input type="checkbox"/> Notary Public or <input type="checkbox"/> Deputy Clerk My Commission Expires: _____		DATE OF SERVICE SIGNATURE OF WITNESS, OFFICER, ATTORNEY OR ATTORNEY'S DESIGNEE

STATE OF TENNESSEE
TENNESSEE REGULATORY
AUTHORITY

SUBPOENA

(ORDER TO APPEAR)

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CIVIL ACTION

DOCKET NO. 03-00438

IN RE: APPLICATION OF JACKSON ENERGY AUTHORITY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY

TO: (NAME, ADDRESS, & TELEPHONE NUMBER OF WITNESS)

Mr. Dana R. Wheeler
Senior VP and CFO
Jackson Energy Authority
119 East College Street
Jackson, TN 38301
(731) 422-7207

Method of Service:

☐ Davidson County Sheriff☒ Personal Service☐ Out of County Sheriff

You are hereby commanded to appear at the time, date and place specified for the purpose of giving testimony. In addition, if indicated, you are to bring the items listed. Failure to appear may result in punishment by fine and/or imprisonment as provided by law.

TIME

11:00 a.m.

DATE

Nov. 10, 2003

ITEMS TO BRING:

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☐ Additional List Attached

DATE ISSUED

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☐ PETITIONER ☒ INTERVENOR

Attorney: (NAME, ADDRESS, & TELEPHONE NUMBER)

Charles B. Welch, Jr.
618 Church Street, Suite 300
Nashville, TN 37219 615-726-1200

ATTORNEY'S SIGNATURE:

DESIGNEE:

DESIGNEE'S SIGNATURE:

BY

J. Richard Collier
HEARING OFFICER

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DATE OF SERVICE

Signature of ☐ Notary Public or ☐ Deputy Clerk

My Commission Expires:

SIGNATURE OF WITNESS, OFFICER, ATTORNEY
OR ATTORNEY'S DESIGNEE

STATE OF TENNESSEE
TENNESSEE REGULATORY
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SUBPOENA

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IN RE: APPLICATION OF JACKSON ENERGY AUTHORITY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY

TO: (NAME, ADDRESS, & TELEPHONE NUMBER OF WITNESS)

Mr. John W. Williams
 President and CEO
 Jackson Energy Authority
 119 East College Street
 Jackson, TN 38301
 (731) 422-7500

Method of Service:

☐ Davidson County Sheriff☒ Personal Service☐ Out of County Sheriff

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IN RE: APPLICATION OF JACKSON ENERGY AUTHORITY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY

TO: (NAME, ADDRESS, & TELEPHONE NUMBER OF WITNESS)

Mr. Darrell T. Pope
Telecommunications Project Manager
Jackson Energy Authority
119 East College Street
Jackson, TN 38301
(731) 422-7500

Method of Service:

☐ Davidson County Sheriff☒ Personal Service☐ Out of County Sheriff

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Charles B. Welch, Jr.

618 Church Street, Suite 300

Nashville, TN 37219 615-726-1200

ATTORNEY'S SIGNATURE:

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OR ATTORNEY'S DESIGNEE

My Commission Expires: